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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1056

STUART SCHERR and STEVEN GOODMAN,

Petitioners,

—against—

UNIVERSAL MATCH CORPORATION, and
UNITED STATES OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Counter Statement of Question Presented

Should this Court review a judgment of the Court of Appeals affirming a summary judgment rendered by the District Court where the only issue involved is the application of the "works for hire" rule of 17 U.S.C. §26 relating to an employer's right to copyright interest in a statue constructed by employees in the course of their employment?

Counter Statement of the Case

Petitioners commenced a copyright infringement action against Universal Match Corporation (hereinafter referred to as "Universal"), in which the United States of America (hereinafter referred to as the "Government") intervened as a party defendant. Respondents' motion for summary judgment in the District Court was granted on the grounds that

> (1) The copyright notice was inadequate and thus invalid.
>
> (2) Any and all copyright interest in the statue belongs to, or inures to the benefit of, the Government under the "works for hire" rule.

The Court of Appeals fully set forth the facts [417 F.2d 497, 498-499 (2nd Cir. 1969)], affirmed the summary judgment on the sole ground that any copyright interest in the statue belongs to the Government under the "works for hire" rule of 17 U.S.C. §26 [417 F.2d 497, 500 (2nd Cir. 1969)] and expressly refused to rule on the issue of whether or not the notice of copyright was inadequate and thus invalid [417 F.2d 497, 500 (2nd Cir. 1969)].

ARGUMENT

Since the only issue presented for review is the application by the District Court and the Court of Appeals of the "works for hire" rule, the petition for certiorari should be denied.

Although the primary interests at stake in the determination of this petition are those of the Government, Universal, obviously, has a real interest in the outcome. The detailed reasons why this Court should not review the decision of the Court of Appeals are amply set forth in the Government's brief, and we will not repeat them here.

However, Universal would like to emphasize that the only issue presented is the application of the "works for hire" rule. All of the other questions mentioned by the Courts below are extraneous; and none of them—however decided—could change the result of application of that rule.

Certainly, therefore, no "special or important reasons" have been shown which would warrant this Court's granting certiorari. On the law, no conflict of opinions among the Courts of Appeals has been demonstrated or even claimed, nor has an important question of Federal law which should be settled by this Court been delineated by the proceedings below. Even on the facts, the case is unique and unlikely to arise again. Accordingly, plaintiffs' petition has failed to meet the requirements of Rule 19 of this Court.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied.

Dated: February 5, 1970

EDWIN J. JACOB
Attorney for Respondent,
Universal Match Corporation

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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